

**RESPONSE TO
RESTRICTION
REQUIREMENT**

Application #	10/041,775
Confirmation #	3155
Filing Date	January 10, 2002
First Inventor	BROWN et al.
Art Unit	1645
Examiner	Devi, Sarvamangala J.N.
Docket #	P07023US01/BAS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SIR:

In response to the Restriction Requirement mailed January 13, 2004, Applicants herein traverse the election requirement in that an election is not required because the two specific conditions associated with overstimulation of T-cells are not patentably distinct, but are merely conditions arising from such overstimulation regardless of the fact that the conditions arise from different stimuli. Moreover, since the two specific conditions are both associated with the general condition of the main claim (overstimulation of T-cells), there clearly will not be a serious burden to examine claim 12 without an election requirement, and pursuant to MPEP 803, if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even if it is asserted that it includes claims to independent or distinct inventions. Finally, since pursuant to 37 CFR 1.141, Applicant is entitled to consideration of claims to a reasonable number of disclosed species in addition to the elected species, upon allowability of the main claims, such species will be includable in the final set of claims, and it is unclear that the requirement of an election at this time will advance the prosecution of the application.

Without prejudice to the foregoing which requests withdrawal of the election requirement as unnecessary, Applicant herein elects choice (a), toxic shock syndrome as the elected species. As per the previous restriction requirement, the currently elected

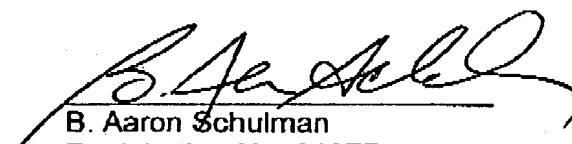
claims are Claims 9, 11 and 12, drawn to a method of treating a pathogenic condition, to which the Examiner will link Claims 1-4 and 16 for examination, and the present elected species is readable on Claims 9, 11 and 12, and Claims 1-4.

Examination of the claims identified above and allowance of the application is thus respectfully requested.

Respectfully submitted,
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